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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,024	12/12/2000	Brian Seed	08100/003003	5494

7590

04/01/2003

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EXAMINER

HUI, SAN MING R

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 04/01/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/735,024

Applicant(s)

SEED ET AL.

Examiner

San-ming Hui

Art Unit

1617

--Th MAILING DATE of this communication appears on the cover sheet with the corresponding address--

THE REPLY FILED 11 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 11 March 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.


NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 55-71.Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: \_\_\_\_\_

  
SREENI PADMANABHAN  
PRIMARY EXAMINER

3/27/03

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments with regards to rejection under 112, first paragraph are believed had been addressed in the previous office action mailed November 5, 2002. Applicant's rebuttal arguments averring the cited prior art's failure to teach all the limitation have been considered, but are found unpersuasive. See page 9; last paragraph bridging to page 10, first paragraph of the previous office action mailed November 5, 2002. Applicant's rebuttal arguments regarding Sassen have been considered, but are not found persuasive. The reduction of the thickness of the intimal is clearly demonstrated. the effect is compared to the control group. This is well known to one of ordinary skill in the art that comparing the results of the treatment group to that of the control in order to assess the effectiveness of the treatment. It is the purpose of using a control group in the study. Applicant's rebuttal argument averring that no motivation was provided by the cited prior art have been considered, but are not found persuasive. All the herein claimed agents are known to be useful in reducing, treating, and/or preventing restenosis. In other words, all these agents are known to have positive effect against restenosis. It flows logically to combine these agents together useful for the very same purpose, at least additive effects would be reasonably expected, absent evidence to the contrary (See In re Kerkhoven 205 USPQ 1069). Applicant's remarks on Sassen's review of different studies, including Daoud, have been considered, but are not found persuasive. Firstly the herein claimed method is not employing fish oil alone. Secondly, Sassen does not indicate that Daoud is using fish oil in the study therein. In fact, in page 187, Sassen listed four studies on the effectiveness of fish oil in regression of atherosclerotic lesions and later concludes that fish oil is effective in leading regression in certain kinds or components of atherosclerotic lesions (See particularly page 187, col. 2, first paragraph, last sentence). In conclusion, the cited prior art, as a whole, would render the herein claimed invention obvious, absent evidence to the contrary..